



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA- 2011-0301]**

#### **Qualification of Drivers; Exemption Applications; Diabetes Mellitus**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA).

**ACTION:** Notice...

**SUMMARY:** FMCSA announces receipt of applications from 18 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

**DATES:** Comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2011-0301 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. For acknowledgment of receipt of your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the Federal Register on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, S.E., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 18 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b) (3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

**QUALIFICATIONS OF APPLICANTS**

*Mark A. Aspden*

Mr. Aspden, age 51, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist

certifies that Mr. Aspden understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Aspden meets the requirements of the vision requirements at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from Massachusetts.

*Rodney C. Backus*

Mr. Backus, 28, has had ITDM since 1997. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Backus understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Backus meets the requirements of the vision requirements at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New York.

*Peter A. Briester*

Mr. Briester, 48, has had ITDM since 2004. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist

certifies that Mr. Briester understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Briester meets the requirements of the vision requirements at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

*Gerald R. Curran*

Mr. Curran, 46, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Curran understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Curran meets the requirements of the vision requirements at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

*Shawn K. Fleming*

Mr. Fleming, 44, has had ITDM since 2000. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fleming understands diabetes management and monitoring, has stable

control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fleming meets the requirements of the vision requirements at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class C CDL from Pennsylvania.

*Daniel C. French*

Mr. French, 41, has had ITDM since 1991. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. French understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. French meets the requirements of the vision requirements at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have/has stable diabetic retinopathy. He holds an operator's license from Virginia.

*Garry W. Garrison*

Mr. Garrison, 48, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Garrison understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Garrison

meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

*Gregory L. Horton*

Mr. Horton, 45, has had ITDM since 2009. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Horton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Horton meets the requirements of the vision requirements at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Georgia.

*Anthony B. Jones*

Mr. Jones, 51, has had ITDM since 2009. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jones understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jones meets the requirements of the vision requirements at 49 CFR 391.41(b)(10). His

ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

*Jay T. Kirschmann*

Mr. Kirschmann, 33, has had ITDM since the age of 8. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kirschmann understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kirschmann meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from North Dakota.

*Patrick G. Landers*

Mr. Landers, 23, has had ITDM since 2007. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Landers understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Landers meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His

ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New York.

*Paul J. Marshall*

Mr. Marshall, 48, has had ITDM since 1992. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Marshall understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Marshall meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Utah.

*Robert J. Pierce*

Mr. Pierce, 58, has had ITDM since 1992. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Pierce understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pierce meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His

ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C chauffeur's license from Michigan.

*Kenneth B. Pratt*

Mr. Pratt, 70, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Pratt understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pratt meets the requirements of the vision requirements at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

*James G. Rahn*

Mr. Rahn, 41, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rahn understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rahn meets the requirements of the vision requirements at 49 CFR 391.41(b)(10). His optometrist

examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

*Ward A. Stone*

Mr. Stone, 62, has had ITDM since 2004. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Stone understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stone meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Wisconsin.

*Todd J. Timmerman*

Mr. Timmerman, 40, has had ITDM since 1980. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Timmerman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Timmerman meets the requirements of the vision requirement at 49 CFR 391.41(b)(10).

His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class DL operator's license from Wisconsin.

*James L. Weinert*

Mr. Weinert, 58, has had ITDM since 1997. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Weinert understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Weinert meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Ohio.

### **Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441)<sup>1</sup>. The

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<sup>1</sup> Section 4129(a) refers to the 2003 notice as a "final rule." However, the 2003 notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21<sup>st</sup> Century (49 U.S.C. 31305).

Section 4129 requires: (1) elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the Federal Register on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: November 10, 2011

Larry W. Minor  
Associate Administrator for Policy

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